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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEAN MILLER,

Plaintiff - Appellant,

v.

COUNTY OF BUTTE; et al.,

Defendants - Appellees.

No. 04-15589

D.C. No. CV-00-01733-EJG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Edward J. Garcia, District Judge, Presiding

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY and BERZON, Circuit Judges.

Jean Miller appeals pro se the district court's summary judgment in favor of defendants in her 42 U.S.C. § 1983 action alleging false arrest and use of excessive force. We have jurisdiction pursuant to 28 U.S.C. § 1291.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court granted summary judgment on the basis of the *Heck* doctrine because success on the merits of Miller's claims would necessarily imply the invalidity of her convictions for resisting, delaying or obstructing a peace officer, and battery against a peace officer. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (holding that a claim for damages for which success would imply the invalidity of a conviction is not cognizable until the conviction has been invalidated).

After the district court granted summary judgment, the Appellate Division of the Superior Court for the County of Butte reversed Miller's convictions.¹ Appellees concede that under these circumstances summary judgment should be vacated. *See id.* We therefore vacate the district court's summary judgment and remand for further proceedings consistent with this decision.

Each party shall bear its own costs on appeal.

VACATED and REMANDED.

¹ Miller's unopposed request for judicial notice of the state appellate court's reversal of her convictions is granted.